

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SPARACINO PLLC,
1920 L Street, N.W., Suite 535
Washington, D.C. 20036,

Plaintiff,

v.

The National Archives and Records Administration
8601 Adelphi Road
College Park, Maryland 20740-6001,

Defendant.

Case No.: 1:19-cv-03134

COMPLAINT FOR VIOLATION OF THE FREEDOM OF INFORMATION ACT

INTRODUCTION

1. Plaintiff Sparacino PLLC represents hundreds of U.S. citizens who were injured, or whose relatives were killed or injured, by terrorist attacks in Iraq, including American military veterans and Gold Star families. Plaintiff brings this action for relief under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to compel the National Archives and Records Administration (“NARA”) to produce records related to Jaysh al-Mahdi, the Iraqi terrorist group that harmed the American families that Plaintiff represents.

2. Plaintiff properly submitted a targeted request for relevant NARA records pursuant to FOIA and applicable NARA regulations.

3. NARA’s statutory deadline for making a determination concerning the request has expired, but NARA has neither produced any documents nor made a determination as to the request. NARA’s failure to act on Plaintiff’s requests violates FOIA.

4. Plaintiff has constructively exhausted administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and now seeks judicial relief compelling NARA to promptly search for and produce the requested records and enjoining any further improper withholding.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201(a), and 2202.

6. Venue lies in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

PARTIES

7. Plaintiff Sparacino PLLC is a law firm with an office in Washington, D.C. Plaintiff submitted the FOIA request identified in this Complaint.

8. Defendant The National Archives and Records Administration is an “agency” of the federal government within the meaning of 5 U.S.C. § 552(f)(1). NARA is believed to have possession, custody, and control of records responsive to Plaintiff’s request.

FACTUAL ALLEGATIONS

I. Background

9. Plaintiff and its undersigned co-counsel represent more than 1,200 U.S. citizens who were killed or injured, or whose relatives were killed or injured, by the Shiite terrorist group Jaysh al-Mahdi in Iraq between 2005 and 2011. These victims of heinous terrorist attacks have asserted claims in this District against large medical-supply companies that helped finance Jaysh al-Mahdi’s terrorist acts by, among other things, making corrupt payments to obtain contracts from the Jaysh al-Mahdi-controlled Ministry of Health (“Ministry”). *See* Second Am. Compl., *Atchley v. AstraZeneca UK Ltd.*, No. 17-cv-02136-RJL (D.D.C. Feb. 4, 2019), ECF No. 106.

10. NARA possesses records relevant to the claims of Plaintiff’s clients. Specifically, it houses the records of the Special Inspector General for Iraq Reconstruction (SIGIR), which contain information related to Iraqi Ministry of Health, Kimadia, and the Iraqi health care sector.

11. Thus, NARA likely maintains several records relevant to the ways in which Jaysh al-Mahdi raised money for terrorist operations. Such records are relevant to Plaintiff’s clients’ claims and should be produced.

12. The requested records also have broader public significance beyond the *Atchley* litigation. National media has reported on the *Atchley* plaintiffs – many of whom are Gold Star families and wounded military veterans, and all of whom made great sacrifices for our country –

reflecting the public's interest in terrorist financing in Iraq.¹ Further reflecting the public importance of records related to these allegations, the Department of Justice (the "DOJ") is reportedly investigating the corrupt dealings alleged by the *Atchley* plaintiffs,² as several *Atchley* defendants have publicly acknowledged.³ Production of the requested records would thus not only serve the interests of Plaintiff's clients; it would benefit the public interest.

II. Plaintiff Submitted a FOIA Request For NARA Records.

13. On August 13, 2018, Plaintiff properly submitted a FOIA request via email to NARA. The request seeks copies of all records related to the Iraqi Ministry of Health, Kimadia, and the Iraqi health care sector in SIGIR's "Hard Lessons" files. Hard Lessons was a comprehensive report on the United States' reconstruction efforts in Iraq after the 2003 invasion. The request was limited in time (from January 1, 2004 through December 31, 2011) and included a National Archives Identifier, 26409970.

¹ See, e.g., Gardiner Harris, *Lawsuit Claims Three U.S. Companies Funded Terror in Iraq*, N.Y. Times (Oct. 17, 2017); Kyle Swenson, *Lawsuit: Big Pharma Funded Terrorism in Iraq with Payments to Corrupt Health Ministry*, Wash. Post (Oct. 19, 2017).

² See, e.g., Gardiner Harris, *Justice Dept. Investigating Claims that Drug Companies Funded Terrorism in Iraq*, N.Y. Times (July 31, 2018).

³ Three of the five named corporate-family defendants, AstraZeneca, Johnson & Johnson, and Pfizer, disclosed the DOJ investigation in their SEC filings. See AstraZeneca PLC, Report of Foreign Issuer (Form 6-K) at 58 (July 26, 2018) (stating that it "received an inquiry from the US Department of Justice in connection with an anti-corruption investigation relating to activities in Iraq, including interactions with the Iraqi government and certain of the same matters alleged in the [*Atchley*] Lawsuit"); Johnson & Johnson, Quarterly Report (Form 10-Q) at 40-41 (Aug. 2, 2018) ("Also, the company has received an inquiry from the United States Department of Justice regarding the matters set out in the [*Atchley*] complaint."); Pfizer Inc., Quarterly Report (Form 10-Q) at 44 (Aug. 9, 2018) (stating that, "[i]n July 2018, the U.S. Department of Justice requested documents related to [the *Atchley*] matter, which we will be providing"; and noting "government investigations related to contracts with the Iraqi Ministry of Health"). Another defendant, Roche, confirmed to the press that it "received an inquiry from and is cooperating with the Department of Justice on this matter." Angus Liu, *Roche, Johnson & Johnson Pulled into Justice Department Probe of Alleged Terrorist Bribes*, FiercePharma (Aug. 2, 2018), <https://www.fiercepharma.com/pharma/roche-johnson-johnson-also-under-justice-department-probe-alleged-terrorist-bribes>.

14. The request reasonably describes the records sought and provides all information required by Department regulations to perfect the request. *See* 36 C.F.R. § 1250.

15. NARA received the request in August 2018 and assigned a tracking number, RD 58097. Accordingly, the request has triggered NARA's obligation to respond under the statute and its own regulations.

16. Throughout the remainder of August 2018, NARA and Plaintiff corresponded about search terms and responsive records. Based on the nine proposed search terms, NARA identified 300 potentially responsive files. When Plaintiff requested production of these 300 files, NARA responded that these files contained 451,659 pages, thus placing this request in the "second tier" queue. NARA advised that by narrowing the production request to 500 pages or less, the request would be moved into the "first tier" queue.

17. Between October 2018 and November 2018, Plaintiff and NARA corresponded about the effect of narrowing the request. In an attempt to expedite the processing, Plaintiff offered a significantly narrowed request that included only certain interview transcripts, bringing the initial production request under the 500-pages-or-less requirement for transfer into the "first tier" queue. With this narrowed request, Plaintiff advised NARA that Plaintiff eventually wanted production of all 300 responsive files. NARA countered that Plaintiff was to remain in "second tier" queue because of Plaintiff's request for all 300 files. NARA provided a 24-month estimated delivery of the narrowed request. NARA was evasive as to other inquiries made by Plaintiff, including whether withheld names would be released.

18. On December 18, 2018, Plaintiff officially narrowed its request to just the "500-pages-or-less" interview transcripts, even highlighting for NARA the transcripts specifically requested. In addition to this narrowed request, Plaintiff informed NARA of intent to sue if

production takes the predicted two years. In January 2019, upon a status request by Plaintiff, NARA informed Plaintiff that no expedited processing request had ever been received and Plaintiff's request would be processed in the order which it was received. In April 2019, NARA informed Plaintiff that, due to recent reevaluation of NARA's backlogs, the estimated production would be thirty months, as opposed to the original 24-month prediction.

19. In July 2019, Plaintiff again requested the interview transcripts be prioritized over the full 300-file production and requested a status update. NARA informed Plaintiff that the transcripts would be prioritized, and a status update would be forthcoming. In August 2019, Plaintiff finally received a status update. NARA informed Plaintiff that the request was in the "first tier" queue, which maintained a minimum two-year backlog. On August 23, 2019, after numerous requests for the interview transcripts, NARA contradicted prior communications with Plaintiff and informed Plaintiff that the interview transcripts would in fact not be expedited over the full 300-file production.

III. NARA Failed to Make a Determination within FOIA's Time Limits, and Plaintiff Has Constructively Exhausted Administrative Remedies.

20. Under the ordinary operation of FOIA's twenty-day compliance period, NARA had to respond to Plaintiff's August 2018 request no later than September 11, 2018. *See* 5 U.S.C. § 552(a)(6)(A)(i) (requiring a determination within 20 working days of receipt of a FOIA request).

21. NARA's regulations state that it "may stop the clock for processing a request one time in order to seek your clarification," but the clock restarts once the requester responds. 36 C.F.R. § 1250.26(d). To the extent the clock stopped for clarification, Plaintiff responded by the end of 2018 at the latest, and NARA's clock restarted at that point.

22. As of the date of this Complaint, NARA has failed to produce any of the 300 documents that NARA has identified as responsive to Plaintiff's request. Further, NARA has

refused, despite numerous requests, to expedite production of interview transcripts that number less than 500 pages. In the intervening year, Plaintiff has contacted NARA personnel about the status of its request numerous times but has received excuse after excuse about the mounting delay.

23. Despite several inquiries, therefore, Plaintiff has no idea when the Department intends to respond to its pending request.

24. NARA's failure to comply with FOIA's deadline for making a determination and producing documents constructively exhausts Plaintiff's administrative remedies and authorizes Plaintiff to bring suit in this District to compel prompt production and to enjoin continued wrongful withholding of records responsive to Plaintiff's request. *See* 5 U.S.C. § 552(a)(6)(C)(i).

CLAIMS FOR RELIEF

Count I: Failure to Comply with FOIA

25. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

26. Plaintiff properly made a request for records within the possession, custody, and control of NARA.

27. NARA is an agency subject to FOIA.

28. NARA was required under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to Plaintiff's FOIA request.

29. The time limit under 5 U.S.C. § 552(a)(6) for NARA to conduct such a search and to make a determination as to Plaintiff's FOIA request has expired.

30. NARA has wrongfully failed to communicate to Plaintiff a determination as to Plaintiff's FOIA request.

31. Pursuant to 5 U.S.C. § 552(a)(3)(A), NARA was required to produce promptly all responsive records that are subject to disclosure under FOIA.

32. NARA has wrongfully failed to make such a production for Plaintiff's FOIA request.

33. Plaintiff has exhausted administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

34. The Court should therefore order NARA to promptly produce all responsive records, subject to withholdings agreed to by the parties or approved by the Court.

35. To facilitate determination of the validity of any withholdings based on FOIA exemptions NARA might ultimately assert, Plaintiff seeks an order compelling NARA to produce indexes justifying redactions to or withholding of responsive records.

Count II: Declaration Precluding Assessment of Fees

36. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

37. NARA has failed to comply with time limits under 5 U.S.C. § 552(a)(6).

38. NARA did not provide timely written notice to Plaintiff of any unusual circumstances.

39. No court has determined that exceptional circumstances exist.

40. Accordingly, Plaintiff is entitled to a declaration that the agency may not assess any search fees associated with any of Plaintiff's FOIA request, pursuant to 5 U.S.C. § 552(a)(4)(A)(viii).

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court:

- a. Order NARA to promptly conduct a reasonable search for all records responsive to Plaintiff's FOIA request, to the extent such a search has not already been conducted, and to demonstrate that it employed search methods reasonably likely to lead to the discovery of responsive records;
- b. Order NARA to produce within 20 days or such other time as the Court deems proper all records responsive to Plaintiff's FOIA request that are subject to disclosure under FOIA, as agreed to by the parties or determined by the Court, and indexes justifying any withholdings or redactions;
- c. Declare that NARA failed to comply with the time limits under 5 U.S.C. § 552(a)(6) and that search fees therefore may not be assessed under § 552(a)(4)(A)(viii) with respect to Plaintiff's FOIA request;
- d. Award Plaintiff attorney's fees and costs incurred in relation to this case, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- e. Grant Plaintiff any other relief the Court deems just and proper.

Dated October 18, 2019

Respectfully submitted,

/s/ Christopher J. Cormier

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